

Stop the Importation and Manufacturing of Synthetic Analogues Act of 2019

SECTION 1 – SHORT TITLE

This section designates the Act as the *Stop the Importation and Manufacturing of Synthetic Analogues Act of 2019*, or “SIMSA.”

SECTION 2 – ESTABLISHMENT OF SCHEDULE A

This section establishes a new schedule, Schedule A, under the Controlled Substances Act (“CSA”). For a substance to be included under Schedule A it must:

1. Be imported, or offered for import, into the United States;
2. Have a chemical structure similar to a substance included under CSA schedules I - V; and
3. Have an actual or predicted stimulant, depressant or hallucinogenic effect.

This definition is nearly identical to the existing definition for a controlled substance under the Analogue Enforcement Act. *See* 21 U.S.C. § 802(32)(A). This definition also focuses on the importation of a substance, since most deadly synthetic drugs are produced in China and Mexico and smuggled into the United States.

SECTION 3 – TEMPORARY AND PERMANENT SCHEDULING OF SCHEDULE A SUBSTANCES

This section establishes the process for scheduling Schedule A substances, both on a temporary and on a permanent basis. Under this process:

Temporary scheduling:

- The Attorney General may issue a temporary order if the substance meets Schedule A criteria and scheduling the substance will assist in preventing abuse.
- A temporary order will take effect 30 days after its publication in the Federal Register, and last for up to 5 years. The Attorney General may extend the order for up to 180 days.
- The Attorney General shall notify the Secretary of HHS prior to the issuance of a temporary scheduling order and take into consideration any comments submitted under this process. As such, research on Schedule A substances is encouraged and facilitated during this period.

Permanent scheduling:

- Not earlier than 3 years after the issuance of a temporary scheduling order, the Attorney General may issue a permanent scheduling order.
- If the Secretary of HHS determines that a substance does not qualify for inclusion in Schedule A, the Attorney General may not issue a permanent scheduling order and must terminate any temporary scheduling orders against the substance within 30 days.

SECTION 4 – PENALTIES

This section establishes penalties for illegally importing or exporting a schedule A substance, including manufacturing a Schedule A substance with the intent to illegally import such substance into the United States.

These penalties reflect the importance of punishing and deterring drug trafficking organizations in China and Mexico who import these substances into the United States.

This section also provides an avenue for criminal defendants charged under this section to petition a court for review if the Schedule A substance for which the defendant was charged or convicted is later removed from Schedule A or determined to not be illegal. This avenue for addressing this issue already exists in criminal law, but this inclusion makes clear criminal defendant can seek recourse when dealing with Schedule A substances.

SECTION 5 – FALSE LABELING OF SCHEDULE A SUSBTANCES

This section subjects illegally importing or exporting a Schedule A substance without proper labelling to existing CSA penalties.

This section also establishes a similar recourse for criminal defendants charged under this section if the substance is found to not be illegal.

SECTION 6 – REGISTRATION REQUIREMENTS FOR HANDLERS OF SCHEDULE A SUSBTANCES

This section directs the Attorney General to register applicants to import or export Schedule A substances for research, analytical or industrial purposes. Additionally, this section establishes public interest considerations for the Attorney General to make in issuing such registration.

SECTION 7 – ADDITIONAL CONFORMING AMENDMENTS

This section makes conforming and technical changes in support of other sections of the bill, to fully integrate Schedule A into the CSA (21 USC § 801 et seq.), and the Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.).

SECTION 8 – SENTENCING REVIEW

This section allows an individual who is convicted under Section 4 (illegally importing, exporting, or manufacturing a Schedule A substance) or Section 5 (illegally importing or exporting a Schedule A substance without proper labeling) of this Act to petition the sentencing court to review the individual's sentence if the substance for which the individual was convicted is later descheduled or rescheduled.

SECTION 9 – RULES OF CONSTRUCTION

This section clarifies that nothing in the bill affects the ability of the Attorney General to schedule, re-schedule or decontrol substances under the current CSA, or to prosecute offenses under the Analogue Enforcement Act, 21 U.S.C. § 813, or any other portion of the CSA.

In other words, even after a substance is placed on Schedule A, the government may still seek to place it on another schedule or decontrol it after more information about the substance is acquired. In addition, even after a substance is placed on Schedule A, the government could still prosecute using the Analogue Enforcement Act, if appropriate in a given circumstance.